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SENATE BILL 71

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE KNOWN AS HUMAN TRAFFICKING; PROVIDING PENALTIES; ESTABLISHING THE TASK FORCE TO COMBAT HUMAN TRAFFICKING; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] HUMAN TRAFFICKING.--

A. Human trafficking consists of a person knowingly:

(1) recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;

1 (2) recruiting, soliciting, enticing,
2 transporting or obtaining by any means a person under the age
3 of eighteen years with the intent or knowledge that the person
4 will be caused to engage in commercial sexual activity; or

5 (3) benefiting, financially or by receiving
6 anything of value, from the labor, services or commercial
7 sexual activity of another person with the knowledge that
8 force, fraud or coercion was used to obtain the labor, services
9 or commercial sexual activity.

10 B. The attorney general and the district attorney
11 in the county of jurisdiction have concurrent jurisdiction to
12 enforce the provisions of this section.

13 C. Whoever commits human trafficking is guilty of a
14 third degree felony; except if the victim is under the age of:

15 (1) sixteen, the person is guilty of a second
16 degree felony; or

17 (2) thirteen, the person is guilty of a first
18 degree felony.

19 D. Prosecution pursuant to this section shall not
20 prevent prosecution pursuant to any other provision of the law
21 when the conduct also constitutes a violation of that other
22 provision.

23 E. In a prosecution pursuant to this section, a
24 human trafficking victim shall not be charged with accessory to
25 the crime of human trafficking.

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1 F. A person convicted of human trafficking shall,
2 in addition to any other punishment, be ordered to make
3 restitution to the victim for the gross income or value of the
4 victim's labor or services and any other actual damages in
5 accordance with Section 31-17-1 NMSA 1978.

6 G. As used in this section:

7 (1) "coercion" means:

8 (a) causing or threatening to cause harm
9 to any person;

10 (b) using or threatening to use physical
11 force against any person;

12 (c) abusing or threatening to abuse the
13 law or legal process;

14 (d) threatening to report the
15 immigration status of any person to governmental authorities;
16 or

17 (e) knowingly destroying, concealing,
18 removing, confiscating or retaining any actual or purported
19 government document of any person; and

20 (2) "commercial sexual activity" means any
21 sexual act or sexually explicit exhibition for which anything
22 of value is given, promised to or received by any person."

23 Section 2. [NEW MATERIAL] HUMAN TRAFFICKING--BENEFITS AND
24 SERVICES FOR HUMAN TRAFFICKING VICTIMS.--

25 A. Human trafficking victims found in the state

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1 shall be eligible for benefits and services from the state
2 until the victim qualifies for benefits and services authorized
3 by the federal Victims of Trafficking and Violence Protection
4 Act of 2000; provided that the victim cooperates in the
5 investigation or prosecution of the person charged with the
6 crime of human trafficking. Benefits and services shall be
7 provided to eligible human trafficking victims regardless of
8 immigration status and may include:

- 9 (1) case management;
- 10 (2) emergency temporary housing;
- 11 (3) health care;
- 12 (4) mental health counseling;
- 13 (5) drug addiction screening and treatment;
- 14 (6) language interpretation, translation
15 services and English language instruction;
- 16 (7) job training, job placement assistance and
17 post-employment services for job retention;
- 18 (8) services to assist the victim and the
19 victim's family members; or
- 20 (9) other general assistance services and
21 benefits as determined by the children, youth and families
22 department.

23 B. As used in this section, "human trafficking
24 victim" means a person subjected to human trafficking by a
25 person charged in New Mexico with the crime of human

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1 trafficking.

2 Section 3. TEMPORARY PROVISION--TASK FORCE TO COMBAT
3 HUMAN TRAFFICKING--MEMBERSHIP--DUTIES.--

4 A. The "task force to combat human trafficking" is
5 created. The task force shall consist of the following
6 members:

7 (1) the attorney general or the attorney
8 general's designee;

9 (2) the secretary of health or the secretary's
10 designee;

11 (3) the secretary of children, youth and
12 families or the secretary's designee;

13 (4) the secretary of public safety or the
14 secretary's designee;

15 (5) the chief public defender or the chief
16 public defender's designee;

17 (6) a representative from the New Mexico
18 district attorneys association;

19 (7) representatives of local law enforcement
20 and state police from critical geographic areas of New Mexico
21 affected by immigrant issues and human trafficking problems;
22 and

23 (8) representatives from organizations that
24 provide services to victims of human trafficking, including
25 immigrants and immigrant victims of sexual assault and domestic

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1 violence.

2 B. The task force shall:

3 (1) collaborate with the United States
4 attorney for the district of New Mexico, the United States
5 border patrol and the United States immigration and customs
6 enforcement to carry out the duties of the task force;

7 (2) collect and organize data on the nature
8 and extent of human trafficking in New Mexico;

9 (3) monitor and evaluate the implementation of
10 this 2008 act, including the progress of federal, state and
11 local law enforcement agencies in preventing human trafficking,
12 protecting and providing assistance to victims of human
13 trafficking and prosecuting human trafficking offenders;

14 (4) develop and conduct training for law
15 enforcement personnel and victims services providers to
16 identify victims of human trafficking;

17 (5) examine the training protocols developed
18 by federal, state and local law enforcement agencies related to
19 dealing with human trafficking victims and offenders;

20 (6) assist in coordinating federal, state and
21 local government agencies in the implementation of this 2008
22 act;

23 (7) implement a media awareness campaign in
24 communities affected by human trafficking;

25 (8) develop recommendations on how to

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1 strengthen state and local efforts to prevent human
2 trafficking, protect and assist human trafficking victims and
3 prosecute human trafficking offenders; and

4 (9) submit an annual report of its activities,
5 findings and recommendations, including any proposed
6 legislation, in December of each year to the governor and the
7 legislature.

8 C. The chair of the task force shall be the
9 attorney general or the attorney general's designee, and the
10 task force shall meet at the call of the chair.

11 D. The public members of the task force are
12 entitled to per diem and mileage as provided in the Per Diem
13 and Mileage Act and shall receive no other perquisite,
14 compensation or allowance.

15 E. The attorney general shall provide the staff for
16 the task force.

17 F. The task force to combat human trafficking is
18 terminated on July 1, 2016.

19 Section 4. APPROPRIATIONS.--

20 A. Three hundred thirty-two thousand dollars
21 (\$332,000) is appropriated from the general fund to the
22 following entities in fiscal year 2009 for the following
23 purposes:

24 (1) eighty-two thousand dollars (\$82,000) to
25 the office of the attorney general for per diem and mileage for
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1 the public members of the task force to combat human
2 trafficking, training for law enforcement personnel and victims
3 services providers, a media awareness campaign and other
4 expenditures for the task force to combat human trafficking
5 pursuant to Section 3 of this act; and

6 (2) two hundred fifty thousand dollars
7 (\$250,000) to the children, youth and families department to
8 provide benefits and services to human trafficking victims in
9 accordance with Section 2 of this act.

10 B. Any unexpended or unencumbered balance remaining
11 at the end of fiscal year 2009 shall revert to the general
12 fund.

13 Section 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2008.